

OGC Has Reviewed

11 January 1973

MEMORANDUM FOR:



STATINTL

SUBJECT:

Retroactive Provisions of Public Law  
92-596

1. Sections 1, 2 and 3 of P.L. 92-596 (86 Stat. 1317, October 27, 1972) authorize members of the Armed Forces who are in a missing or captured status to accumulate leave beyond the 60 or 90-day limitations imposed by current statutes. This law intends that members be paid for leave accumulated upon their return to military control or that a member's survivors be paid for leave accumulated upon a determination of the member's death. The question is whether these sections have any application to or effect on members who were in a missing or captured status prior to the enactment of this law.

2. Section 3 states that sections 1 and 2, which explain how the amount of leave is to be calculated, became effective as of 28 February 1961. This is the date the first member of the Armed Forces entered the missing status in the Vietnam conflict. This law applies to members of the Armed Forces who were carried in a missing or captured status for varying periods of time since 28 February 1961. These members, former members or their survivors may submit claims for reimbursement under the provisions of this Act. See S. Rep. No. 92-1294, 92d Cong., 2d Sess. (1972) found at 11 U.S. Cong. and Admin. News 6878, 6880.

STATINTL



Office of General Counsel

AEG:ks

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## ARMED FORCES—MISSING—LEAVE WITHOUT LIMITATION

*For Legislative History of Act, see p. 6878*

PUBLIC LAW 92-596; 86 STAT. 1317

[H. R. 14911]

An Act to amend titles 10 and 37, United States Code, to authorize members of the armed forces who are in a missing status to accumulate leave without limitation, to amend title 10, United States Code, to authorize an additional Deputy Secretary of Defense, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

Section 701 of title 10, United States Code,<sup>86</sup> is amended—

(1) by inserting “and subsection (g)” after “subsection (f)” in subsection (b); and

(2) by adding the following new subsection:

“(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the sixty-day limitation in subsection (b) and the ninety-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

“(1) the Secretary concerned receives evidence that the member is dead; or

“(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than one hundred and fifty days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of one hundred and fifty days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.”

Sec. 2. Section 501 of title 37, United States Code,<sup>87</sup> is amended—

(1) by striking out “section,” in the first sentence of subsection (d) and inserting in place thereof “section and for accumulated leave under subsection (h) of this section,”; and

(2) by adding the following new subsection:

“(h) Payment shall be made for all leave accumulated under section 701(g) of title 10 as soon as possible after the name of the person concerned is removed from a missing status, as defined in section 551(2) of this title.”

<sup>86.</sup> 10 U.S.C.A. § 701(b), (g) (1), (2).

<sup>87.</sup> 37 U.S.C.A. § 501(d), (h).

Sec. 3. The first as of February 28, 19

Sec. 4. Chapter 4 follows:

(1) Section 134<sup>88</sup>

“§ 134. Deputy Secretary; duties; j

“(a) There are two civilian life by the 1 the Senate. A person Defense within ten missioned officer of

“(b) The Deputy cise such powers as Deputy Secretaries, President shall act when the Secretary

“(c) The Deputy of Defense immedia (2) Sections 135( “Deputy Secretary” taries”.

(3) The item in to read as follows:

“134. Deputy Secretary precedence

Sec. 5. Section amended by striking

Sec. 6. Section i ed to read as follow

“(1) Deputy

Sec. 7. Section U.S.C. 833(c))<sup>92</sup> is

“(c) Notwithsta Code, only the De the National Secur ed in the Secretar

Approved October

<sup>88.</sup> 10 U.S.C.A. § 134(

<sup>89.</sup> 10 U.S.C.A. § 135

<sup>90.</sup> 10 U.S.C.A. § 171(

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ARMED FORCES—MISSING—LEAVE P.L. 92-596

Sec. 3. The first and second sections of this Act become effective as of February 28, 1961.

Sec. 4. Chapter 4 of title 10, United States Code, is amended as follows:

(1) Section 134<sup>88</sup> is amended to read as follows:

§ 134. Deputy Secretaries of Defense: appointment; powers and duties; precedence

"(a) There are two Deputy Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as a Deputy Secretary of Defense within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

"(b) The Deputy Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretaries, in the order of precedence, designated by the President shall act for, and exercise the powers of, the Secretary when the Secretary is disabled or there is no Secretary of Defense.

"(c) The Deputy Secretaries take precedence in the Department of Defense immediately after the Secretary."

(2) Sections 135(c) and 136(e)<sup>89</sup> are each amended by striking out "Deputy Secretary" and inserting in place thereof "Deputy Secretaries".

(3) The item in the analysis relating to section 134 is amended to read as follows:

"134. Deputy Secretaries of Defense: appointment; powers and duties; precedence."

Sec. 5. Section 171(a) (2) of title 10, United States Code,<sup>90</sup> is amended by striking out "the" and inserting in place thereof "a".

Sec. 6. Section 5313(1) of title 5, United States Code,<sup>91</sup> is amended to read as follows:

"(1) Deputy Secretaries of Defense (2)."

Sec. 7. Section 303(c) of the Internal Security Act of 1950 (50 U.S.C. 833(c))<sup>92</sup> is amended to read as follows:

"(c) Notwithstanding section 133(d) of title 10, United States Code, only the Deputy Secretaries of Defense and the Director of the National Security Agency may be delegated any authority vested in the Secretary of Defense by subsection (a)."

Approved October 27, 1972.

88. 10 U.S.C.A. § 134(a), (b), (c).  
89. 10 U.S.C.A. §§ 135(c), 136(e).  
90. 10 U.S.C.A. § 171(a) (2).

91. 5 U.S.C.A. § 5313(1).  
92. 50 U.S.C.A. § 833(c).